

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGELA EATZ and BARBARA EATZ,

Docket No.: 06 CV 4190 (DAB)(HP)

Plaintiffs,

-against-

AFFIDAVIT

IV FLUSH, LLC, PINNACLE MEDICAL
SUPPLY AND IVEDCO, LLC,

Defendants.

FREDERICK H. FERN, an attorney duly licensed to practice law in the State of New York and in the Southern District Court of New York, being duly sworn states:

1. I am counsel on behalf of defendant Ivedco, LLC and submit this Affidavit in response to the *sua sponte* Order to Show Cause of Judge Deborah Batts dated January 5, 2007.

2. Upon service of plaintiffs' Second Supplemental Summons and Second Amended Complaint, Ivedco filed their Notice of Petition for Removal together with a FRCP Rule 7.1 Statement.

3. Shortly thereafter, an Answer and Affidavit of Service was filed with the Court Clerk for the Southern District of New York on June 9, 2006, as confirmed by the Civil Docket Sheet annexed hereto as Exhibit "A".

4. In an attempt to move the case forward, we have contacted Your Honor's Chambers to schedule an initial scheduling conference and prior thereto hold a Rule 26(f) Conference among the parties.

5. Since an Answer on behalf of co-defendants IV Flush, LLC and Pinnacle Medical Supply, Inc. had not been filed by the ECF system, the Court was apparently

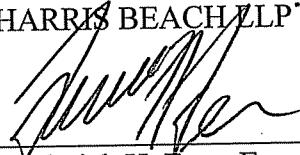
unaware that all parties had appeared by counsel, as the co-defendants failed to follow proper ECF procedures in filing their responsive pleading.

6. Via Affidavit dated January 11, 2007, counsel for IV Flush, LLC and Pinnacle Medical Supply, Inc. attested to the recent filing of their Answer with the Southern District of New York Clerk. As such, issue is joined as to all defendants and we request that this Court schedule a Rule 16 Conference.

Dated: New York, New York
January 22, 2007

Respectfully submitted,

HARRIS BEACH LLP



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TO: SULLIVAN PAPAIN BLOCK
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Attn: Virginia McGrane, Esq.
Attorneys for Defendants
IV FLUSH, LLC and
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303 Old Tarrytown Road
White Plains, New York 10603
(914) 509-2910

EXHIBIT “A”

ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:06-cv-04190-DAB**

Eatz et al v. IV Flushes, LLC et al
Assigned to: Judge Deborah A. Batts
Cause: 28:1441 Notice of Removal

Date Filed: 06/02/2006
Jury Demand: Both
Nature of Suit: 365 Personal Inj. Prod.
Liability
Jurisdiction: Diversity

Plaintiff**Angela Eatz****Plaintiff****Barbara Eatz**

V.

Defendant**IV Flushes, LLC****Defendant****Pinnacle Medical Supply****Defendant****Ivedco, LLC**

represented by **Frederick Harold Fern**
Harris Beach ,LLP(NYC)
805 Third Avenue
New York, NY 10022
(212) 687-0100
Fax: 212 687-0659
Email: ffern@harrisbeach.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/02/2006	<u>1</u>	NOTICE OF REMOVAL from Supreme Court, County of New York. Case Number: 115800/05. (Filing Fee \$ 350.00, Receipt Number 580682). Document filed by IV Flushes, LLC, Pinnacle Medical Supply, Ivedco, LLC.(mbe,) Additional attachment(s) added on 6/6/2006 (jar,). (Entered: 06/02/2006)
06/02/2006		Magistrate Judge Henry B. Pitman is so designated. (mbe,) (Entered: 06/02/2006)
06/02/2006		Case Designated ECF. (mbe,) (Entered: 06/02/2006)
06/02/2006	<u>2</u>	RULE 7.1 DISCLOSURE STATEMENT. Document filed by Ivedco, LLC.

		(mbe,) Additional attachment(s) added on 6/6/2006 (jar,). (Entered: 06/02/2006)
06/07/2006	<u>3</u>	DEMAND for Trial by Jury. Document filed by Angela Eatz, Barbara Eatz (Carboy, Andrew) (Entered: 06/07/2006)
06/07/2006	<u>4</u>	AFFIDAVIT OF SERVICE of Notice of Petition for Remoal and Rule 7.1 Statement served on All Parties on 6/2/2006. Service was made by Mail. Document filed by Ivedco, LLC. (Fern, Frederick) (Entered: 06/07/2006)
06/09/2006	<u>5</u>	ANSWER to Second Amended Complaint with JURY DEMAND. Document filed by Ivedco, LLC.(Fern, Frederick) Modified on 6/9/2006 (kkc,). (Entered: 06/09/2006)
06/09/2006	<u>6</u>	AFFIDAVIT OF SERVICE of Answer to 2nd Amended Complaint served on All Parties on 06/09/2006. Service was made by Mail. Document filed by Ivedco, LLC. (Fern, Frederick) (Entered: 06/09/2006)

PACER Service Center			
Transaction Receipt			
11/14/2006 17:54:17			
PACER Login:	hb0622	Client Code:	eatz
Description:	Docket Report	Search Criteria:	1:06-cv-04190-DAB
Billable Pages:	1	Cost:	0.08

AFFIDAVIT OF SERVICE


STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Jessica L. Glavan being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years and resides in Middlesex County, New Jersey. That on the 23rd day of January, 2007 she served the within **AFFIDAVIT** upon:

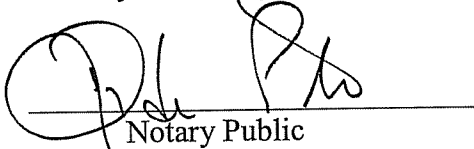
TO: SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO PC
Attn: Frank V. Floriani, Esq.
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WHITE FLEISCHNER & FINO, LLP
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White Plains, New York 10603
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by depositing a true copy of same securely enclosed in a postpaid wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


JESSICA L. GLAVAN

Sworn to before me this
23rd day of January, 2007


Notary Public

RHONDA PITT
Commissioner of Deeds
City of New York NO 2-11023
Commission Expires December 1, 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGELA EATZ and BARBARA EATZ,

Docket No.: 06 CV 4190 (DAB)(HP)

Plaintiff,

-against-

IV FLUSHES, LLC, PINNACLE MEDICAL
SUPPLY and IVEDCO, LLC,

Defendants.

AFFIDAVIT

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